

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 58th LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By **CHAIRMAN JIM SHOCKLEY**, on January 21, 2003 at 8 A.M., in Room 137 Capitol.

ROLL CALL

Members Present:

Rep. Jim Shockley, Chairman (R)
Rep. Paul Clark, Vice Chairman (D)
Rep. Jeff Laszloffy, Vice Chairman (R)
Rep. George Everett (R)
Rep. Tom Facey (D)
Rep. Steven Gallus (D)
Rep. Gail Gutsche (D)
Rep. Christopher Harris (D)
Rep. Michael Lange (R)
Rep. Bruce Malcolm (R)
Rep. Brad Newman (D)
Rep. Mark Noennig (R)
Rep. John Parker (D)
Rep. Holly Raser (D)
Rep. Diane Rice (R)
Rep. Scott Sales (R)
Rep. Ron Stoker (R)
Rep. Bill Thomas (R)

Members Excused: None.

Members Absent: None.

Staff Present: John MacMaster, Legislative Branch
Lisa Swanson, Committee Secretary

Please Note. These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing & Date Posted: HB 222, 1/3/2003; HB 234, 1/3/2003;
HB 214, 1/3/2003;
Executive Action: HB 171; HB 197; HB 210; HB 212; HB
209

HEARING ON HB 222

Sponsor: REP. JOHN PARKER, HD 45, Great Falls

Opening Statement by Sponsor:

REP. PARKER opened on HB 222. He stated this bill will give law enforcement, the courts and probation extra tools to make their jobs safer and more efficient. He explained that this bill would provide district court judges more tools to use at sentencing, give probation officers more control in arrests, transfer supervision fees to the Department of Corrections (DOC), and require a fee to cover the costs of producing a presentence investigation report (PSI).

{Tape: 1; Side: A; Approx. Time Counter: 1 - 31}

Proponents' Testimony:

Mike Ferriter, Administrator of Community Corrections Division, DOC, supported HB 222. He stated the bill has four issues which would aid DOC employees and the criminal justice system. He explained the four issues: clarification of revocation of probationary sentences, collect supervision fees, clarify sentence reduction statute for boot camp, and provide adult probation and parole officers additional arrest authority. He stated he would only address supervision fees and boot camp provisions. He stated this bill brings the statute up-to-date with current supervision fees. He stated this bill would streamline the sentence reduction process for boot camp.

{Tape: 1; Side: A; Approx. Time Counter: 32 - 111}

Bud Walsh, Probation and Parole Officer, DOC, supported HB 222. He teaches firearms instruction at the DOC. He stated that during a home inspection, the officers often find individuals who possess weapons. He stated they deal with drug users and dealers. He explained officer safety is being compromised if they cannot control the situation in the home. He stated section six of the bill would provide tools to ensure probation and parole officer's safety.

EXHIBIT(juh12a01)

EXHIBIT(juh12a02)

EXHIBIT(juh12a03)

{Tape: 1; Side: A; Approx. Time Counter: 112 - 177}

Monty Letexier, Probation and Parole Officer, supported HB 222. He explained that HB 222(6) gives him authority to stop people until law enforcement arrives. He stated this bill will allow him to go one step further in ensuring officer support.

EXHIBIT(juh12a04)

Bill Slaughter, Director, DOC, supported HB 220. He stated that the section of the bill he wished to speak on regards citizen arrests. He stated a parole officer is not a citizen nor a police officer. He stated this bill will clarify a parole officer's responsibilities in an arrest situation.

{Tape: 1; Side: A; Approx. Time Counter: 178 - 310}

Chad Field, DOC Training Officer, supported HB 222. He stated he trains probation and parole officers. He stated the officers write PSI's for the court and they mean a lot to the criminal justice system. He stated that he teaches corrections history, theory, and the philosophy of their role in the system. He explained that this bill will help streamline the process.

{Tape: 1; Side: A; Approx. Time Counter: 311 - 389}

Kathy Gordon, DOC, supported HB 222. She stated the \$50 application fee for interstate compact transfers will cover all administrative costs. She stated there are a lot of costs and human efforts in complying with the transfers. She explained that this fee would lessen their entitlement and make inmates who wish to transfer be more accountable.

{Tape: 1; Side: A; Approx. Time Counter: 390 - 483}

Diana Koch, DOC, supported HB 222. She supported HB 222 and spoke about the sections of the bill. She proposed amendments.

{Tape: 1; Side: B; Approx. Time Counter: 1 - 41}

Harold Blattie, DOC, Probation and Parole, supported HB 222. He stated that section one of the bill should be struck.

{Tape: 1; Side: B; Approx. Time Counter: 42 - 82}

Opponents' Testimony:

Wade Cooperider, Deputy Sheriff, Lewis and Clark County and Montana Sheriffs and Peace Officers Association, opposed HB 222 of the bill. He was concerned that the probation and parole officers do not have the same training as peace officers. He

explained that a lot of litigation involves searches and seizures. He was concerned that probation and parole officers would be held to a higher standard than an average citizen. He explained that probation and parole officers have more expanded rights than peace officers. He stated that they have the right to enter people's houses at any time without a warrant. He explained how this could result in much litigation.

Jim Smith, Montana Sheriff's and Peace Officers Association, opposed HB 222 and section six in particular. He emphasized there needs to be further discussion.

Informational Testimony:

Mary Phippen, Montana Association of Clerks of District Court, agreed with Harold Blattie's testimony to keep the language on page 11, lines 2-6, as written in the bill.

{Tape: 1; Side: B; Approx. Time Counter: 83 - 159}

Questions from Committee Members and Responses:

REP. LASZLOFFY asked Ms. Gordon whether the \$50 would cover the administrative costs. She stated the fee could be waived but that the \$50 fee will greatly assist in the administrative costs.

REP. FACEY stated he generally supports the bill, but questioned why the bill had been brought now as opposed to 10 years ago.

Mr. Ferriter stated the issues have existed for a long time.

{Tape: 1; Side: B; Approx. Time Counter: 160 - 210}

REP. NOENNIG asked Ms. Koch about the section six language concerning expanded authority in detaining individuals similar to a citizen's arrest. He felt there is a dilemma for probation and parole officers in that they either are or they are not citizens. Ms. Koch agreed that part may need some work.

{Tape: 1; Side: B; Approx. Time Counter: 211 - 305}

REP. NEWMAN asked Jim Smith why the Sheriffs and Peace Officers opposed Section Six, which would allow probation and parole officers the power to make a citizen's arrest. **Mr. Smith** responded that the probation and parole officers receive less training than peace officers. He stated if arrest power is needed, then parole and peace officers should go to the Law Enforcement Academy (Academy), receive training, and become peace officers. He questioned the need for legislation if probation

and parole officers are just citizens with the power to detain others.

{Tape: 1; Side: B; Approx. Time Counter: 306 - 354}

Mr. Smith stated this is a cost issue. He emphasized the costs associated with sending 130 parole and probation officers through the Academy. He stated monetary concerns are one thing and "beefing up" their training is another.

REP. LANGE asked Director Slaughter about the intent of the legislation. **Director Slaughter** responded that there is a difference between what law enforcement officers do and what probation and parole officers do.

{Tape: 1; Side: B; Approx. Time Counter: 355 - 455}

REP. CLARK asked Mr. Walsh about probation officers carrying firearms and whether they go into a home as a team. **Mr. Walsh** stated they do carry firearms and receive training on the use of force when going in as a team. **Mr. Walsh** stated the probation and parole officers would be further trained if HB 222 passed. He stated probation and parole do have mutual agreements with police officers. He emphasized that probation and parole officers do not want to be police officers, but that they want one additional tool to be able to detain someone until a police officer arrives.

{Tape: 2; Side: A; Approx. Time Counter: 1 - 44}

Closing by Sponsor:

REP. PARKER closed on HB 222 stating a citizen's arrest provision in the code does not apply to state probation and parole officers. He believed it is imperative that they be given their authority by statute in order to ensure their safety. He closed stating this bill would allow the probation and parole officers the ability to detain a suspect until law enforcement arrives.

{Tape: 2; Side: A; Approx. Time Counter: 45 - 84}

HEARING ON HB 234

Sponsor: REP. JILL COHENOUR, HD 51, E. Helena

Opening Statement by Sponsor:

REP. JILL COHENOUR opened on HB 234. She stated this bill authorizes law enforcement officials to stop a vehicle operated by a driver under 18 years of age or containing occupants under 18 who are not wearing their seatbelts. She stated it is the duty of Montana to look out for the safety of children. She stated her husband is a highway patrol officer who has seen the tragic results from children not being buckled up.

{Tape: 2; Side: A; Approx. Time Counter: 81 - 178}

Proponents' Testimony:

Shawn Driscoll, Colonel, Montana Highway Patrol, supported HB 234. He stated that the Montana Highway Patrol responds to 11,000 crashes a year. He gave statistics which documented 60 percent as fatal vehicle accidents. He believed that this bill would reduce fatalities and injuries from vehicle crashes. Each significant injury costs about 1.1 million a year.

{Tape: 2; Side: A; Approx. Time Counter: 178 - 260}

Jim Kembel, Police Chiefs of Montana, supported HB 234.

Tom Harrison, AAA, Montana, supported HB 234.

Jerry Williams, Police Officer, Butte, supported HB 234.

REP. TIM DOWELL, HD 78, Kalispell, supported HB 234. He stated that the costs from people not wearing seatbelts affects all of society.

{Tape: 2; Side: A; Approx. Time Counter: 197 - 358}

Opponents' Testimony: None

Informational Testimony: None

Questions from Committee Members and Responses:

REP. EVERETT asked Colonel Driscoll whether officers will be looking to pull people over for this. **Colonel Driscoll** responded that officers would look for movements in the vehicle indicative of a minor not being buckled. **REP. SALES** asked Colonel Driscoll why we need another law. **Colonel Driscoll** responded that **REP. SALES** made a good point, however, this law would set a standard and help save lives.

REP. THOMAS asked Colonel Driscoll about the mechanical failures of seatbelts. **REP MALCOLM** asked Colonel Driscoll whether the occupant or the driver would get the ticket. **Colonel Driscoll** stated that the driver would be held accountable for all the occupants not wearing a seatbelt. **REP. CLARK** asked Colonel Driscoll about when a person would be stopped. **Colonel Driscoll** responded that the officers generally will not stop someone unless the suspect is in violation of the law.

REP. GALLUS asked **REP. COHENOUR** about a scenario in which there are three kids buckled and the adult is not. He posed whether the driver could be stopped. **Colonel Driscoll** responded that if the officer believed the driver was under 18, he would pull him over. **REP. GALLUS** stated that section of the bill needs to be amended. **REP. COHENOUR** responded that if an officer noticed a person under 18 without a seatbelt, they would stop them.

{Tape: 3; Side: A; Approx. Time Counter: 1 - 236}

Closing by Sponsor:

REP. COHENOUR closed on HB 234. She stated that drivers are responsible to ensure that passengers under 18 years of age are wearing seatbelts. She cited U.S. Department of Transportation (USDOT) statistics as showing that the simple act of buckling a seatbelt improves an occupant's chance of surviving a potentially fatal crash by 45 to 73 percent. She stated this law is necessary because a lot of parents do not buckle their children up. She closed stating this bill will educate the public and the kids, and will help people establish the habit of putting on seatbelts.

{Tape: 3; Side: A; Approx. Time Counter: 236 - 281}

HEARING ON HB 214

Sponsor: **REP. JIM SHOCKLEY, HD 61, Victor**

Opening Statement by Sponsor:

REP. SHOCKLEY opened on HB 214 for the Law and Justice Interim Committee. He stated that Montana was in a minority of states in which, until 2002, parents were not liable for their children's bad conduct unless they were an employee. He explained that in a recent case, Crisafilli v. Bass, (2001) the Supreme Court adopted the Restatement of Torts. He explained that the Restatement said a parent is liable for negligently controlling the child. **REP.**

SHOCKLEY read from the Restatement 2nd of Torts, Section 316 1995. He quoted, "A parent is under a duty to exercise reasonable care so to control his minor child as to prevent him from intentionally harming others or from creating unnecessary risk of bodily harm to them if the parent (a) knows or has reason to know he has the ability to control his child; and (b) knows or should know of the necessity and opportunity of exercising control."

{Tape: 3; Side: A; Approx. Time Counter: 282 - 412}

Proponents' Testimony:

Al Smith, Montana Trial Lawyer's Association, (MTLA), supported HB 214. He stated that people should be responsible for their actions. He cited Article II, Section 16 as setting forth the premise that courts of justice and a speedy remedy for injuries should be available to every person. He emphasized this bill makes parents accountable. He stated we can take responsibility for how we supervise our kids. He gave an example of someone with kids living in federal public housing but evicted when their kids were caught selling drugs. He emphasized that the accountability standard in this bill is much less harsh than the federal standard. He stated the bill is good and fine as written.

{Tape: 3; Side: A; Approx. Time Counter: 413 - 470}

Opponents' Testimony:

Greg Van Horssen, State Farm Insurance Company, opposed HB 214. He stated that he had no quarrel with parental supervision. He expressed concern that the statute would be construed too broadly. He believed this bill would have unintended consequences and that State Farm homeowner's policies could be affected.

{Tape: 3; Side: B; Approx. Time Counter: 1 - 119}

Informational Testimony: None

Questions from Committee Members and Responses:

REP. CLARK stated he shared Mr. VanHorsen's concerns. He explained that he works with teenagers, and it is arguable about what a parent should or shouldn't know. He also stated he can foresee a reliability issue. He gave an example of a teenager who tells the parents he is going to a party but who is actually selling drugs on the corner. **Mr. VanHorsen** responded that

parents have a duty to supervise and if they fail to supervise, they could be liable under this bill. He stated as a parent, he knows he has the duty to supervise. He expressed concern for the situation in which the child is off where the parent believes the child to be, and unbeknownst to the parent, the child causes some harm.

{Tape: 3; Side: B; Approx. Time Counter: 120 - 169}

REP. PARKER asked Greg Petesch about the reasonable person test. **Mr. Petesch** explained it is the standard applied in many cases throughout the law. In response to **REP. CLARK'S** example of a teenager selling drugs, he stated that unless the parent knew or should have known the child was selling drugs at that point in time, the parent did not have the opportunity to exercise supervision. He explained the opportunity to exercise supervision under this statute would be that the parent was present or should have been present.

REP. FACEY asked **REP. SHOCKLEY** about reasonable doubt. **REP. SHOCKLEY** explained that reasonable doubt is a standard that is applied in a criminal case, and that preponderance of the evidence is applied in a civil case.

{Tape: 3; Side: B; Approx. Time Counter: 170 - 267}

Closing by Sponsor:

REP. SHOCKLEY closed on HB 214. He stated we need this bill and emphasized that it is very hard to hold a parent liable. He explained there are cases where a parent should be accountable for torts of their children. He stated that Mr. VanHorsen will provide amendments to be considered for executive action.

{Tape: 3; Side: B; Approx. Time Counter: 268 - 301}

EXECUTIVE ACTION ON HB 171

Motion: **REP. LASZLOFFY** moved that **HB 171 DO PASS.**

Motion: **REP. NOENNIG** moved that **HB 171 BE AMENDED.**

Discussion:

REP. NOENNIG passed out amendments which John MacMaster drafted. He stated this bill limits the time in which a defendant may withdraw a guilty plea. He felt that this amendment will make it clear.

Vote: Motion HB 171 BE AMENDED carried 16-1 with PARKER voting no.

Motion/Vote: REP. GUTSCHE moved to RECONSIDER AMENDMENTS TO HB 171. Motion failed 7-10 with REPS. FACEY, GUTSCHE, LANGE, NEWMAN, PARKER, RASER, and SHOCKLEY voting aye.

Motion/Vote: REP. LASZLOFFY moved that HB 171 DO PASS AS AMENDED. Motion carried unanimously roll call vote.

EXECUTIVE ACTION ON HB 197

Motion: REP. LASZLOFFY moved that HB 197 DO PASS.

Discussion:

John MacMaster explained the amendments on page 5, line 26. He stated the Department of Justice added new language. He also emphasized a conflict between this bill and the .08 BAC bill before the Senate. He stated these bills need to be coordinated.

Motion/Vote: REP. NOENNIG moved that HB 197 BE AMENDED. Motion carried unanimously by voice vote.

Motion/Vote: REP. NOENNIG moved that HB 197 DO PASS AS AMENDED. Motion carried unanimously by voice vote.

EXECUTIVE ACTION ON HB 210

Motion: REP. SHOCKLEY moved that HB 210 DO PASS.

Motion/Vote: REP. GUTSCHE moved that HB 210 BE AMENDED. Motion carried unanimously by voice vote.

Motion/Vote: REP. LASZLOFFY moved that HB 210 DO PASS AS AMENDED. Motion carried unanimously by voice vote.

EXECUTIVE ACTION ON HB 212

Motion: REP. SHOCKLEY moved that HB 212 DO PASS.

Discussion:

REP. SHOCKLEY stated this bill would attempt to make the statutes conform to case law.

Vote: Motion that HB 212 DO PASS carried unanimously.

EXECUTIVE ACTION ON HB 209

Motion: REP. SHOCKLEY moved that HB 209 DO PASS.

Discussion:

The Committee discussed whether filing the judgment in the second county would carry the same statute of limitation regarding the lien. REP. SHOCKLEY discussed some amendments on line 18 of the bill emphasizing that the statute of limitations would be from the date of the entry of the judgment.

Motion/Vote: REP. FACEY moved that HB 209 BE AMENDED. Motion carried unanimously by voice vote.

Motion/Vote: REP. SHOCKLEY moved that HB 209 DO PASS AS AMENDED. Motion carried unanimously by voice vote.

ADJOURNMENT

Adjournment: 12 P.M.

REP. JIM SHOCKLEY, Chairman

LISA SWANSON, Secretary

JS/LS

EXHIBIT (juh12aad)